

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KICKFLIP, INC., a Delaware corporation,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant.

C.A. NO. 12-1369-LPS

DECLARATION OF CHRISTOPHER E. SMOAK

Dated: April 17, 2015

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**ATTORNEYS FOR PLAINTIFF
KICKFLIP, INC., D/B/A GAMBIT**

I, Christopher E. Smoak, testify and declare as follows:

1. I am the Chief Technical Officer of Plaintiff Kickflip, Inc. and over 18 years of age. I make this declaration based on personal knowledge, and if called and sworn as a witness could and would testify competently thereto.

2. I submit this declaration to clarify and correct statements I made in deposition testimony and in a declaration filed in this action on January 14, 2014.

3. In preparation for my depositions and prior to submitting the January 14, 2014 declaration, I conferred with Kickflip's corporate counsel, Eric Benisek, regarding the circumstances surrounding the creation and execution of the "Contribution of Assets in Exchange for Shares Agreement" dated December 15, 2009 (which the parties commonly referred to as the "December Agreement").

4. Based on my discussions with Mr. Benisek and my own personal recollection, I provided testimony that the December Agreement was created and executed in December 2009.

5. I believed my testimony relating to the December Agreement to be true and correct at the time I provided it.

6. Last week, in connection with further communications with Mr. Benisek and his firm, I learned that I was mistaken in my prior testimony regarding the December Agreement and related discussions, and confirmed that the December Agreement was created and executed in March 2012.

7. Attached as **Exhibit 1** is a declaration from Mr. Benisek providing further explanation and clarification surrounding the creation and timing of the December Agreement and the basis of my prior testimony relating to the December Agreement.

I, Christopher E. Smoak, testify and declare as follows:

1. I am the Chief Technical Officer of Plaintiff Kickflip, Inc. and over 18 years of age. I make this declaration based on personal knowledge, and if called and sworn as a witness could and would testify competently thereto.

2. I submit this declaration to clarify and correct statements I made in deposition testimony and in a declaration filed in this action on January 14, 2014.

3. In preparation for my depositions and prior to submitting the January 14, 2014 declaration, I conferred with Kickflip's corporate counsel, Eric Benisek, regarding the circumstances surrounding the creation and execution of the "Contribution of Assets in Exchange for Shares Agreement" dated December 15, 2009 (which the parties commonly referred to as the "December Agreement").

4. Based on my discussions with Mr. Benisek and my own personal recollection, I provided testimony that the December Agreement was created and executed in December 2009.

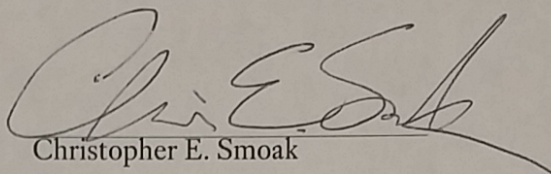
5. I believed my testimony relating to the December Agreement to be true and correct at the time I provided it.

6. Last week, in connection with further communications with Mr. Benisek and his firm, I learned that I was mistaken in my prior testimony regarding the December Agreement and related discussions, and confirmed that the December Agreement was created and executed in March 2012.

7. Attached as **Exhibit 1** is a declaration from Mr. Benisek providing further explanation and clarification surrounding the creation and timing of the December Agreement and the basis of my prior testimony relating to the December Agreement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 17th day of April, 2015 in San Francisco, California.



Christopher E. Smoak